

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)“r,” and 17A.3(1)“b,” the Iowa Finance Authority hereby amends Chapter 24, “Home and Community-Based Services Rent Subsidy Program,” Iowa Administrative Code.

These amendments simplify and clarify the rules governing the Home and Community-Based Services Rent Subsidy Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 30, 2017, as **ARC 3272C**. The Authority received and replied to public comment on the amendments published under Notice on issues pertaining to the waiting list and the appeal process. The Authority made only nonsubstantive changes to the amendments as published under Notice.

The Iowa Finance Authority adopted these amendments on October 4, 2017.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code sections 16.5(1)“r” and 16.47 and 2017 Iowa Acts, House File 586.

These amendments will become effective on November 29, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 265—24.1(16) as follows:

265—24.1(16) Purpose. This chapter defines and structures the rent subsidy program for persons who participate in a home- and community-based services (HCBS) waiver program ~~and who meet the nursing facility level of care for HCBS waiver services as established on or after July 1, 2005, including habilitation services, or Money Follows the Person (MFP).~~ This program is designed to provide rent assistance to ~~these persons to help them~~ HCBS waiver and MFP participants live ~~successfully in their own home and the community until they become eligible for any other local, state or federal rent assistance.~~

ITEM 2. Amend rule 265—24.2(16) as follows:

265—24.2(16) Definitions.

“Adult” means a person aged 18 or over.

“Applicant” means a person aged 18 or over who participates in one of the home- and community-based services waiver programs, habilitation services, or Money Follows the Person.

“Authority” means the Iowa finance authority.

“Child” or “children” means a person or persons under 18 years of age.

“Dependent relative” or “dependent relatives” means a person or persons as defined by the department of human services under the provisions set forth in 441—subrule 51.4(4).

“Habilitation services” means an Iowa Medicaid program designed to provide home- and community-based services to Iowans with the functional impairments typically associated with chronic mental illnesses.

“Home- and community-based services rent subsidy program” means a program as established in 2017 Iowa Acts, House File 586, section 3.

“Home- and community-based services waiver program” or “HCBS” means any of the waiver programs administered by the department of human services under the provisions set forth in 441—Chapter 83 including, but not limited to, the ill and handicapped waiver, the elderly waiver, the AIDS/HIV waiver, the mental retardation waiver, the brain injury waiver, and the physical disabilities waiver, the habilitation services waiver, or Money Follows the Person.

“Housing Choice Voucher (HCV) program” means the federal government’s major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market as created in Section 201 of Title 2 of Public Law 93-383, also known

as the Housing and Community Development Act of 1974, with implementing regulations found in 24 CFR Part 982. Applicants apply for the HCV program through the local public housing authority.

"HUD" means the U.S. Department of Housing and Urban Development.

"Immediate family member" means a spouse, parent or child.

"Legal guardian" means a person lawfully invested with the power, and charged with the obligation, of taking care of and managing the property and rights of a recipient who, because of age, understanding, or self-control, is considered incapable of administering the recipient's own affairs.

"Legal representative" for personal or health care decisions means a person possessing a durable power of attorney for health care, guardian, or next of kin (spouse, adult children, parents, adult siblings under Iowa Code chapter 144A). "Legal representative" for financial decisions means a person possessing a power of attorney, a representative payee, fiduciary or conservator.

"Money Follows the Person (MFP)" means Iowa's Money Follows the Person (MFP) partnership for community integration program, which provides opportunities for individuals in Iowa to move out of intermediate care facilities for persons with intellectual disabilities (ICF/ID) or nursing facilities, and into the community.

"Qualified dependent(s)" means the applicant's spouse or child who is claimed as a dependent of the applicant for federal income tax purposes.

"Qualified rental unit" means an apartment, mobile home, or private room a housing unit for which a signed written lease rental agreement exists and which is governed by Iowa Code chapter 562A. A qualified rental unit does not include a home owned by a an immediate family member.

"Representative payee" means a person who is appointed for a recipient who is unable to receive and manage the recipient's own benefits due to mental or physical impairments. The representative payee is to use the benefits in the recipient's best interest and is personally liable for misuse of funds.

~~"Residential-based supported community living services" means residential-based supported community living services as defined in 441—subrule 78.41(10).~~

ITEM 3. Amend rule 265—24.3(16) as follows:

265—24.3(16) Eligibility requirements. All of the following criteria shall be met.

24.3(1) HCBS recipient. The person shall be an adult recipient of one of the HCBS waiver programs or a child receiving residential-based supported community living services under the mental retardation HCBS waiver program.

24.3(2) 24.3(1) Demonstrated need. ~~To~~ An applicant must demonstrate need; adult applicants must provide evidence that they are responsible for paying more than 30 percent of their gross income for rent and that they are not receiving and are ineligible for other rental assistance. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families or guardians must provide evidence that the children are not receiving and are ineligible for other rental assistance and that more than 30 percent of the children's gross income is obligated for rent. A minimum contribution of \$25 toward the cost of rent is expected from all applicants. This program may not be used to substitute for any other rent subsidy that a person had been receiving at the time of or immediately prior to the time of application to this program. Persons receiving rental assistance at the time of or immediately prior to the time of application to this program shall not be eligible. for rent subsidy by meeting all of the following requirements:

a. The applicant shall provide a copy of an executed rental agreement showing the applicant as a tenant, with signatures by the landlord and the applicant or the applicant's legal guardian;

b. The applicant shall provide evidence that the applicant pays more than 30 percent of the applicant's gross income for rent, with a minimum contribution of \$25 per month;

c. The applicant shall not receive any other permanent rental assistance;

d. The applicant may not use this program to substitute for any other permanent rent subsidy that the applicant had been receiving at the time of or immediately prior to the time of application to this program; and

e. The applicant's rental unit may not be owned by someone who lives in the unit.

24.3(3) Risk of nursing facility care. Applicants must be able to demonstrate both of the following:

~~a. That they have been assessed as needing, at a minimum, nursing facility level of care for HCBS waiver services; and~~

~~b. That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a facility that provides, at a minimum, nursing facility level of care.~~

24.3(4) 24.3(2) Ineligible for other rent subsidies. The person applicant shall have been determined ineligible or be on the waiting list for rent subsidy programs, or provide documentation that the waiting list is closed, under the U.S. Department of Housing and Urban Development (HUD) and any other available rent subsidy programs HUD Housing Choice Voucher (HCV) program administered by Iowa's public housing authorities. In the event that the HCV waiting list is currently closed, the applicant is responsible for monitoring the status of the waiting list application period and must apply at the first available opportunity and provide documentation of HCV application submission to the local public housing authority or be subject to removal from the HCBS rent subsidy program or the HCBS rent subsidy program waiting list.

24.3(5) Responsible for rent. Adult program participants shall be financially responsible for rent. In the case of children receiving residential-based supported community living services under the mental retardation HCBS waiver program, they or their families must demonstrate this financial responsibility.

ITEM 4. Amend rule 265—24.4(16) as follows:

265—24.4(16) Application. Applications for the HCBS rent subsidy program may be obtained on the authority's Web site at www.iowafinanceauthority.gov www.iowafinanceauthority.gov/HCBS. Applications shall be submitted to the Iowa Finance Authority, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312 as directed on the application.

24.4(1) Application process. ~~A person who wishes to apply~~ An applicant shall complete the Application application for HCBS Rent Subsidy rent subsidy and provide verification of the following: all required documentation as specified in the application.

~~a. The applicant's estimated monthly gross income for the 12 months following application, including written evidence from the income sources used to determine that income.~~

~~b. Written evidence from sources of local rental assistance available in the applicant's community that the applicant has applied for that rental assistance and that the applicant has been determined ineligible or placed on a waiting list for that rental assistance. If the waiting list for rental assistance has been closed, a copy of that notice is considered written documentation if signed and dated by a representative of the local rental assistance program.~~

~~c. The total amount of the monthly rent for the qualified rental unit.~~

~~d. The total number of bedrooms in the qualified rental unit.~~

~~e. The applicant's number of dependent relatives living full-time in the qualified rental unit.~~

24.4(2) Date of application. The date of the application shall be the date the completed application, including all required documentation, is received by the authority, including written verification of gross income, written verification of application to other rental assistance programs or a signed, dated copy of the waiting list closure notice, and written verification that the applicant needs nursing facility level of care for HCBS waiver services.

24.4(3) Eligibility determination. The applicant, the applicant's legal representative, or the applicant's case manager shall be notified of the amount of monthly rent subsidy within 25 30 business days of the authority's receipt approval of a complete application. The notice shall be sent on or about the date when the authority determines that funding is available to approve the applicant's rent subsidy. In addition, the applicant may elect to have any of the following notified: legal guardian, case manager or representative payee.

24.4(4) Waiting list. After funds appropriated for this purpose are obligated, the authority shall deny pending applications. The authority shall maintain and administer a statewide waiting list for funding of HCBS rent subsidy as follows:

~~a. A denial shall be accompanied by a notice of decision, which will be sent within 25 business days of the authority's receipt of a complete application. The notice shall state that no funds are available~~

and that the applicant will be placed on the waiting list, or that the applicant does not meet eligibility requirements.

b. Applicants not awarded funding shall be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the authority. In the event that more than one application is received on the same day, the person shall be entered on the waiting list on the basis of the day of the month of the person's birthday, with the lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

c. When funding allows additional persons to be added to the rent subsidy program, their names shall be taken from the statewide waiting list, and their eligibility shall be determined at that time. If the completed application and verification of eligibility are not received by the time line specified by the authority, the person's name shall be dropped from consideration for receipt of the rent subsidy payment.

a. When an application is received, the applicant will be placed on the established waiting list according to the order in which the completed application and all required supporting documents were received by the authority.

b. Waiting list priority shall be given to an applicant:

(1) Who is an approved MFP participant.

(2) Who is transitioning from an out-of-state institutional placement.

(3) Who is transitioning from an institutional setting within Iowa.

(4) Whose rent subsidy has been terminated due to lack of available funds under subrule 24.7(3).

c. When funding allows additional applicants to be added to the HCBS rent subsidy program, their names shall be taken from the statewide waiting list, updated information will be requested, and each applicant's eligibility shall be determined at that time based upon receipt of the requested updated documentation. If the completed application and verification of eligibility are not received by the deadline specified by the authority, the applicant's name may be removed from the waiting list.

ITEM 5. Amend rule 265—24.5(16) as follows:

265—24.5(16) Amount of rent subsidy.

24.5(1) Use of subsidy. Assistance shall be used for rental expense.

24.5(2) Maximum monthly payment for rent. Assistance for rent shall be equal to the lesser of the rent paid, not to exceed 100 percent of the current fair market rent under guidelines of the applicable by the applicant or the current applicable fair market rent as published by HUD low-rent housing program in for the area where the person's applicant's residence is located, less 30 percent of the applicant's gross monthly income of the applicant. The fair market rent used shall be that for a one-bedroom unit or a proportionate share of the fair market rent in living units containing more than one bedroom. When the applicant resides with a dependent relative(s) qualified dependent(s), the proportionate share may consist of additional bedrooms, applying the same maximum monthly payment standard.

24.5(3) Monthly payment. Applicants approved for HCBS rent subsidy payments shall receive an ongoing monthly payment which is equal to the amount determined pursuant to subrule 24.5(2); provided, however, that the authority will not send any payments that amount to less than \$25 \$50 but will accrue subsidy payments until such time as at least \$25 \$50 is accumulated. An approved rent subsidy shall be payable on a monthly basis following approval.

ITEM 6. Amend rule 265—24.6(16) as follows:

265—24.6(16) Redetermination of eligibility.

24.6(1) Time of completion. A redetermination of eligibility for HCBS rent subsidy payments shall be completed:

a. At least once every 12 months.

b. When a change in circumstances occurs that affects eligibility in accordance with rule 265—24.3(16).

c. If the person recipient moves from the residence stated on the approved application.

d. When there is a change greater than ~~\$40~~ \$100 in the recipient's estimated gross monthly income.

24.6(2) *Renewal notice.* The authority shall send a renewal notice ~~at least 60 calendar days~~ before the deadline date for annual redetermination of eligibility.

a. The recipient shall submit the completed ~~Application~~ application for HCBS Rent Subsidy ~~rent subsidy~~ and required verification materials to the ~~Iowa Finance Authority, HCBS Rent Subsidy Program, 2015 Grand Avenue, Des Moines, Iowa 50312~~ authority, as directed on the application.

b. If the authority does not receive the completed application and verification of continuing eligibility by the ~~thirtieth day following the date of notification~~ due date as noted on the authority's Web site, the ~~person's~~ recipient's rent subsidy shall be terminated.

ITEM 7. Amend rule 265—24.7(16) as follows:

265—24.7(16) Termination of rent subsidy payments.

24.7(1) *Reasons for termination.* The HCBS rent subsidy shall terminate at the end of the month in which any of the following occur, and a notice shall be sent ~~which states~~ stating the reason for the termination, which may include, but is not limited to, the following:

a. The ~~person~~ recipient does not meet one or more of the eligibility criteria listed in rule 265—24.3(16).

~~b. The person dies.~~

~~c. b.~~ Completion of the required documentation is not received by the deadline established by the authority.

~~d. c.~~ No further funds are available for the HCBS rent subsidy program.

d. The recipient, case manager, legal guardian or representative payee demonstrates abusive or threatening language or behavior toward authority staff.

e. The recipient is determined to have provided false information.

24.7(2) *Reporting of changes.* The ~~person~~ applicant or the applicant's designated responsible party as certified in the application is required to report to the authority any changes that may affect eligibility within ten business days ~~any changes that may affect eligibility~~ of the occurrence of the change. Failure to do so may result in the applicant's responsibility ~~for repayment of~~ to repay HCBS rent subsidy funds and termination of the HCBS rent subsidy. (See rule 265—24.8(16).)

24.7(3) *Insufficient funding.* If funds are not sufficient to cover payments for all ~~persons on~~ recipients under the HCBS rent subsidy program, ~~persons~~ recipients shall be terminated from the ~~rent subsidy program~~ in inverse order based on the date of ~~initial~~ the approved application. ~~The person, such that the most recently approved recipients shall be terminated from the program first, and the recipient terminated from the program shall move be placed back to on the waiting list, with the person's recipient's original application approval date dictating the person's recipient's position on the waiting list as stated at subrule 24.4(4). The authority is responsible for notifying the persons who will be removed from the rent subsidy for this reason.~~

ITEM 8. Rescind rule 265—24.8(16) as follows:

265—24.8(16) *Fraudulent practices relating to the rent subsidy program.* A person is guilty of a fraudulent practice if that person, or the person's representative, with the intent to gain financial assistance for which that person is not eligible, knowingly makes or causes to be made a false statement or representation, or knowingly fails to report to an employee of the authority any change in circumstances affecting that person's eligibility for financial assistance. ~~In cases of found fraudulent practices, the authority may require, as a condition of continued participation in the rent subsidy program, repayment of the amount that was received by the recipient while the recipient was ineligible.~~

ITEM 9. Rescind rule 265—24.9(16) as follows:

265—24.9(16) Appeals.

24.9(1) An applicant whose application has been timely filed may appeal the authority's decision by filing a written notice of appeal within 14 days of the decision before the Iowa Finance Authority, 2015

Grand Avenue, Des Moines, Iowa 50312. To be considered timely, the notice of appeal must actually be received at the above address within the time frame specified.

~~24.9(2)~~ The notice of appeal shall state the grounds upon which the applicant challenges the decision.

~~24.9(3)~~ An appeal shall be heard by the executive director of the authority. The executive director shall grant the appellant reasonable opportunity to gather information and inquire as to why the decision in question was made. The executive director shall allow the appellant to present all the relevant facts supporting the appellant's position. Such presentation shall be held not later than 30 days after the filing of an appeal, unless the parties agree to hold the presentation on a later date.

~~24.9(4)~~ Within 7 days of the presentation, the executive director shall issue a written decision which clearly states whether or not the authority's decision was appropriate. Such decision shall be delivered to the appellant and the board of the authority.

~~24.9(5)~~ If the executive director determines that the authority's decision was not appropriate, the executive director shall recommend to the board of the authority a proper remedy.

~~24.9(6)~~ Final agency action. After receiving a written decision from the executive director, the board must either approve or decline to approve the executive director's recommendation no later than the next regularly scheduled board meeting. Such action by the board shall be the final decision of the agency.

~~24.9(7)~~ Judicial review. — Judicial review of the authority's final decisions may be sought in accordance with Iowa Code section 17A.19.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/25/17.